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U.S. Citizenship and Immigration Services

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[redacted]

FILE [redacted] Office: NEBRASKA SERVICE CENTER Date: JUL 18 2005

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IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a postdoctoral research scholar. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner challenges the director's factual conclusions. While we concur with the petitioner that the director erred in concluding that the *proposed* benefits of the petitioner's work would not be national in scope, the petitioner has not overcome the director's remaining concerns.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a medical degree from the University of Medicine and Pharmacy in Timisoara, Romania. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

We concur with the director that the petitioner works in an area of intrinsic merit, medical research. The director then questioned whether the proposed benefits of her work, improved understanding of genetic defects relating to facial deformities, would be national in scope. The director's concern was that the petitioner's research had yet to have a national impact. The issue for this prong is whether the *proposed* benefits of the petitioner's work would be national in scope. To answer this question we look at the petitioner's occupation itself. We find that the proposed benefits of medical research relating to birth defects do have the potential for a national impact. Thus, the director erred in his analysis of this prong. His concerns regarding the petitioner's track record are better discussed under the remaining prong.

It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. The director's concerns regarding the speculative opinions provided and the lack of evidence regarding how the petitioner is impacting the research community, while expressed under the wrong prong, are valid concerns as to the petitioner's ability to meet this final prong.

Initially, the petitioner submitted letters from her immediate circle of colleagues at the University of Louisiana Health Sciences Center and the University of Iowa. In response to the director's request for additional evidence, the petitioner submitted several independent letters. The submission of such letters in and of itself, however, is insufficient; the content of those letters must be evaluated. For the reasons discussed below, the letters submitted in this matter are not persuasive.

Dr. [redacted] a professor of pediatrics at the University of Louisiana Health Sciences Center, asserts that the petitioner participated in a 25-day exchange program where she "trained" at that center. While Dr. [redacted] praises her skills and predicts success for the petitioner, he does not identify a specific accomplishment made by the petitioner.

Dr. [redacted] a professor of pediatrics at the University of Iowa, discusses the petitioner's assistance in editing the *Iowa Neonatology Handbook* and her translation of this material into Romanian for use in the university's "well established education exchange program with neonatologists from Romania." Dr. [redacted] further asserts that this handbook is updated annually and the petitioner is the only person in Iowa, possibly the United States, capable of revising the Romanian edition. While other claims of eligibility are advanced and will be discussed below, this claim is clearly based on a shortage of available workers and relies on the purported unique abilities of the petitioner. The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. at 221. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. *Id.*

Dr. [redacted] an associate professor at the University of Iowa, discusses the petitioner's work on a study of the genotypes relating to cleft lips and palates. Dr. Nopoulos states:

> We coordinated the collection of samples that [the petitioner] was then responsible for performing the genetic analysis on. She was able to do this work in an efficient and organized fashion. The results of this analysis were very interesting and have been presented orally at several meetings in both the department of psychiatry and pediatrics here at the University.

Dr. [redacted] a professor at the University of Iowa, asserts that the petitioner worked on a project investigating the genetic causes of preeclampsia, where she managed the DNA samples from mothers who developed preeclampsia. The petitioner presented this work at a conference in 2001. Also in 2001, the petitioner presented a poster presentation relating to her work on developing cost effective assays valuable for studies of birth defects. The petitioner then began work on a project to "look for candidate genes involved in the etiology of orofacial clefts and to find the role of environmental factors, particular[ly] in the presence or absence of the vitamin intake during pregnancy, acting as a covariate with the candidate gene risk factors." This project involved analysis of DNA from the National Birth Defects Prevention Study by the Centers for Disease Control (CDC). The petitioner presented this work at a conference in 2002.

Dr. Murray concludes that the petitioner "has already made substantial and unique contributions to the scientific and medical literature in this field." The petitioner's field, like most science, is research-driven, and there would be little point in presenting research that did not add to the general pool of knowledge in the field. There is no evidence that the national interest waiver was intended as a blanket waiver for researchers who present or publish their work. Dr. [redacted] does not identify the petitioner's contribution to the field or explain how it is significant.

In a subsequent letter, Dr. [redacted] asserts that the temporary nature of the petitioner's postdoctoral position makes labor certification impossible. The inapplicability or unavailability of a labor certification cannot be viewed as sufficient cause for a national interest waiver; the petitioner still must demonstrate that the self-employed alien will serve the national interest to a substantially greater degree than do others in the same field. *Matter of New York Dep't of Transp.* 22 I&N Dec. at 218, n. 5.

On appeal, Dr. [redacted] asserts that the director erred in concluding that the record did not corroborate claims that the CDC will utilize the petitioner's methods in the future. Dr. [redacted] notes that some of the petitioner's coauthors work for the CDC now; thus, the CDC is already utilizing the petitioner's methods. The record does not support this statement. While two references do work for the CDC, Dr. [redacted] and Dr. [redacted] neither of these individuals is a coauthor of the petitioner's, although Dr. [redacted] listed as a contributor to the design on a proposal that includes the petitioner. Regardless, working on a study that the CDC oversees is not evidence that the CDC is adopting the petitioner's methodologies for its own use. As will be discussed below, the letters from both representatives of the CDC are general and lack examples of specific influential findings made by the petitioner.

Dr. [redacted] further asserts on appeal that the waiver is warranted to allow the petitioner to pursue federal funding as a permanent resident. The conclusion that allowing the petitioner to compete is in the national interest is only possible if the petitioner establishes a track record of success with some degree of influence on the field as a whole. While several references attest to the petitioner's "record," such general assertions without examples of successful results and an explanation of their influence in the field are insufficient.

[redacted] a research coordinator at the University of Iowa, asserts that the petitioner "contributes greatly to the success we enjoy in Dr. [redacted] lab in making scientific contributions to the body of knowledge on maternal and child health." Ms. [redacted] does not identify any specific contribution to the field. She also asserts that the petitioner is a coauthor on a submitted paper. A paper that, as of the date of filing, had yet to be disseminated in the field does not relate to the petitioner's eligibility as of that date.

Dr. [redacted] a former professor at the University of Iowa, indicates that he has met the petitioner and reviewed her work. He discusses the importance of the problem the petitioner's research "addresses," but fails to identify specific and notable improvements the petitioner has made to this problem. He asserts that the petitioner has "already established a record through publications and presentations," noting the prestige of the journal that accepted the petitioner's work. We will not presume the influence of a given article from the publication in which it appears; rather we look for evidence of the influence of the individual article, such as evidence that it has been widely cited. Dr. [redacted] concludes that the petitioner "has already gone well beyond the typical expectations of her peers."

The petitioner also submitted the purported attachment to an e-mail message from [redacted] a project manager for the Centers for Disease Control. The e-mail itself is addressed to Dr. [redacted] by his first name, suggesting that Mr. [redacted] is a colleague of Dr. [redacted] Mr. [redacted] discusses the importance of the petitioner's area of research, which we do not contest. He then asserts that the petitioner has "already established a record through publications and presentations," but does not identify the results published and presented or explain their significance and impact in the field. We reiterate that nothing in the law suggests that the waiver was designed as a blanket waiver for every researcher who publishes or presents her work. We note that more than one million peer-reviewed articles are published annually in scientific, medical and technical journals.[1] He concludes that the petitioner "has gone well beyond the typical expectations of her peers."

[1] According to www.elsevier.com.

Dr. [redacted] a lead researcher at Children's Hospital Research Center in Oakland, California, explains that he has met the petitioner on his visits to the University of Iowa. He asserts that the petitioner's work "holds great promise," that she has "already established a record through publications and presentations," and that she "exceeds the promise of most of her peers."

The remaining letters, some of which do not appear on the letterhead of the institutions the references represent, are from individuals who have not collaborated with the petitioner. These references imply that their letters are in response to a request to review the petitioner's work and provide a letter in support of the petition. They do not indicate that they had ever heard of the petitioner prior to this request or that they have applied her work in their own endeavors.

Dr. [redacted] Medical Director of the New York State Congenital Malformations Registry, asserts that the petitioner's work "holds great promise for providing new insights into how we might prevent or better treat" children born with cleft lips or palates. In support of this speculative statement, Dr [redacted] asserts that the petitioner has "already established a record through presentations," noting that the petitioner has also published in a leading journal. As stated above, we will not presume the influence of a given article from the publication in which it appears. Dr. [redacted] concludes that the petitioner goes "well beyond the usual expectations."

Dr. [redacted] Director for the Arkansas Center for Birth Defects Research and Prevention, asserts that the petitioner's work "holds promise for important insights for prevention and treatment of this defect."

Dr. [redacted], an epidemiologist with the National Center on Birth Defects and Developmental Disabilities with the Centers for Disease Control, asserts that she is the lead epidemiologist of an eight-site study in which the petitioner has participated. She concludes that the petitioner's work "holds great promise," that she "has already established a record through publications and presentations," and that she "has gone beyond the typical expectations of her peers."

Dr. [redacted] a professor at the University of North Carolina, concludes that the petitioner's work "holds great promise," that she "has already established a clear record through publications and presentations," and that she "has gone well beyond the typical expectations of her peers."

Dr. [redacted] a professor at the University of California, Berkeley and an associate editor of the journal that accepted the petitioner's work for publication, concludes that the petitioner's work "holds great promise," that she "has already established a record through publications and presentations," and that she "has gone well beyond the typical expectations of her peers."

The only reference to discuss the petitioner's results is Dr. [redacted] an associate professor at the Medical College of Wisconsin. Dr. [redacted] explains that the petitioner's research "shows that there may be a susceptible group of women who taking additional folic acid in early pregnancy may lower the risk of having a child with cleft lip and palate." Dr [redacted] concludes that this finding "holds great promise for providing new insights into how we might prevent or better treat this birth malformation."

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien

qualified to work on this project must also qualify for a national interest waiver. At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification she seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

Given the repeated assertions that the petitioner's work "holds great promise" and the failure to provide more specific information regarding the petitioner's past record of success, we emphasize that while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. Subjective assurances that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We acknowledge that the petitioner has presented her work. After the date of filing, the petitioner's work was accepted and published in a prestigious journal. The record, however, lacks evidence of impact of this work, such as evidence that it has been widely cited in medical journals or obstetric guides. The letters from independent researchers are extremely general without providing specific examples to support the general claims, use nearly identical language and cannot establish the petitioner's influence in the field.

On appeal, the petitioner submits a certificate from the Governor of the State of Iowa recognizing the petitioner for her work on the causes of birth defects, which "has already attracted national and international attention." The petitioner failed to submit any evidence of the significance of such recognition, such as the criteria used by the governor's office in granting requests for these types of certificates and the number issued each year. We note that recognition from the government is one of the criteria for aliens of exceptional ability, a classification that normally requires a labor certification. We cannot conclude that meeting one, or even the requisite three, warrants a waiver of that requirement in the national interest. Finally, the certificate is dated after the date of filing and cannot establish the petitioner's eligibility as of that date. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak;* 14 I&N Dec. 45, 49 (Comm. 1971).

Finally, the assertion that the lengthy labor certification process would drive the petitioner from research to private practice is not persuasive. First, the petitioner fails to explain how the labor certification process is less burdensome for private practitioners. (The petitioner does not assert she would seek to work in an underserved area and, thus, qualify for a national interest waiver pursuant to section 203(b)(2)(B)(ii).) Regardless, nothing in the legislative history suggests that the national interest waiver was intended simply as a means for employers (or self-petitioning aliens) to avoid the inconvenience of the labor certification process. *Id.* at 223.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.